

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

KATHY NICKERSON, EUGENE NICKERSON,
KATHY NICKERSON, next friend of
COURTNEY NICKERSON, a minor,

Plaintiff,

v.

Civil Action No. 5:06CV143
(STAMP)

CARL D. BRUNETTA and MARY ANN BRUNETTA,

Defendants.

ORDER SCHEDULING INFANT SETTLEMENT HEARING

This Court has been advised that the parties have reached a settlement of all matters in controversy in this civil action including, but not limited to, an infant plaintiff's claims for personal injuries and loss of parental consortium and that, therefore, Court approval of this settlement pursuant to the applicable West Virginia statute is necessary.

Accordingly, this Court hereby appoints Gerald E. Lofstead, IV of Wheeling, West Virginia, a practicing member of the bar of this Court, to serve as guardian ad litem for Courtney Nickerson, an infant, and it is ORDERED that plaintiff, Courtney Nickerson, by Gerald E. Lofstead, IV, her guardian ad litem, and counsel for all plaintiffs, and defendants, by counsel, appear before the Court on January 10, 2008 at 12:00 p.m. in Wheeling, West Virginia, for an infant settlement hearing. The parties should file a motion or petition for approval of the infant settlement on or before January 7, 2008. The guardian ad litem should file, if possible, a

response to the motion or petition for approval of settlement with this Court on or before January 9, 2008.

In connection with this hearing, the Court may also consider a request for attorney's fees, should such a request be made, for legal work performed on behalf of the infant plaintiff. See Statler v. Dodson, 466 S.E.2d 497 (W. Va. 1995) (requiring court before awarding attorney's fees to determine if legal employment is "reasonably necessary," if contract for employment was fair and reasonable, and if legal fees requested were reasonable in relation to legal services performed.) In determining attorney's fees, the Court shall follow the twelve factor test adopted by the West Virginia Supreme Court of Appeals in Aetna Casualty & Surety Co. v. Pitzrolo, 176 W. Va. 190, 342 S.E.2d 156, 162 (1986); see also Donnarumma v. Barracuda Tanker Corp., 79 F.R.D. 455 (C.D. Cal. 1978) ("[w]here minors are involved, quantum meruit is a favored approach of courts discharging their responsibilities to zealously safeguard the interest of minors"); see additionally Stafford v. Bishop, 98 W. Va. 625, 127 S.E. 501 (1925). The Court shall not be bound by any contingent fee agreements in determining the appropriate fees. Donnarumma, 79 F.R.D. at 469.

The undersigned judge is currently scheduled to be in trial on the date of the infant settlement hearing. In the event that the trial is not held on this date, the infant settlement hearing will be rescheduled to another time on this date by separate order.

The Clerk is directed to transmit copies of this order to counsel of record herein and to Gerald E. Lofstead, IV, guardian ad litem.

DATED: December 18, 2007

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE